

HUMAN RESOURCES POLICY
Fauquier County, Virginia

Policy Title: Sexual Harassment
Section No.: 46

Effective Date: 03/18/02
Supersedes Policy: 03/02/93

I. PURPOSE

It is the objective of the Board of Supervisors to provide a work environment conducive to the performance of job duties and free from intimidation or coercion in any form. The Board of Supervisors upholds a stringent policy against all forms of discrimination, including sexual harassment.

II. SCOPE

This policy applies to all employees and applicants for employment.

III. DEFINITIONS

A. Sexual Harassment

Sexual harassment is defined as a violation under Title VII of the Civil Rights Act of 1964 that could subject the County, departments and individuals to legal and financial liability. Sexual harassment includes sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment;
2. submission to or rejection of such conduct by an individual is used as a basis for employment decisions affecting that individual; and/or
3. such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive work environment.

IV. PROCEDURES

A. Prohibited Conduct

1. Sexual harassment is a prohibited employment practice.
2. The following examples of conduct may or may not constitute sexual harassment under Title VII of the Civil Rights Act of 1964 depending

upon the circumstances under which they occur. These example do, however, represent inappropriate behavior and shall constitute misconduct under the Human Resources Policies of Fauquier County for which appropriate disciplinary action shall be taken. The examples do not represent all forms in which misconduct under this policy or sexual harassment may occur.

- a. Explicit or implicit promises of career advancement or preferential treatment in return for sexual favors including, but not limited to, hiring, promotion, training and other opportunities or benefits; acceptance of a lower standard of work performance; providing higher performance evaluations; and lax time-keeping, when similarly qualified persons are not afforded such benefits or opportunities.
- b. Explicit or implicit threats that an employee's job shall be adversely affected if sexual demands are rejected, including, but not limited to, lower evaluations, denial of promotions or other employment opportunities, punitive transfers, terminations, and altered or increased work assignments.
- c. Denial of employment opportunities or otherwise adversely affecting a person's employment based on rejection of sexual attention or demands.
- d. Deliberate, repeated or unsolicited verbal comments and gestures of a sexual nature. This includes any type of sexually suggestive remarks, pictures or jokes.
- e. Deliberate, repeated and unsolicited, and unwanted touching of any kind, including the touching, patting, kissing or pinching of another person and the repeated brushing against another person's body.
- f. Propositions of a sexual nature; continued or repeated verbal comments of a sexual nature; degrading, abusive, or sexually suggestive comments about an employee's appearance; whistling or catcalling of a sexual nature; and the display of sexually suggestive objects or pictures.

B. Responsibilities

1. Managers and supervisors have the responsibility to:

- a. ensure that no County employee is subjected to sexual harassment or actions which could be perceived as sexual harassment as a result of his/her own actions, those of other employees, or those of third parties such as customers or vendors;
 - b. provide a working environment which is free of harassment and/or intimidation;
 - c. promptly report any observed behavior that violates this policy;
 - d. make all employees aware of this policy;
 - e. make all employees aware that false accusations shall result in disciplinary action, up to and including termination.
2. Managers and supervisors who allow sexual harassment to continue or fail to take appropriate corrective action upon becoming aware, may be considered a party to the offense, even though they may not have engaged in such behavior.
3. Managers and supervisors who fail to respond appropriately to allegations of sexual harassment may be subject to disciplinary action, up to and including termination.
4. All employees are responsible for conducting themselves in a manner that shall ensure proper performance of County business and maintenance of public trust and confidence without harassment of any kind.
5. Victims of sexual harassment have the responsibility to make it clear to the harasser, directly or through the complaint process, that such behavior is offensive and to provide notice of the harassment in a timely manner as outlined in the complaint procedure that follows.
6. The Human Resources Director is responsible for developing and managing this policy, investigating complaints and reporting complaints to the County Administrator.

C. Complaint Procedure

1. Any employee who believes that he or she has been the subject of sexual harassment should report the alleged charge immediately in accordance with the following procedure. Under no circumstances shall it be necessary for the employee to report a charge to the person who has allegedly harassed the employee.

2. All information disclosed in the complaint procedure, including the name of the complainant and the accused, as well as the existence of the complaint, shall be held in confidence and shall only be disclosed on a need-to-know basis in order to investigate and resolve the matter. Any violation of confidentiality shall constitute misconduct and result in appropriate disciplinary action.
3. This policy is intended to provide an alternative to the County Grievance Procedure for resolution of complaints of sexual harassment. In the event that the employee elects to pursue a complaint under this policy, the employee shall not be permitted to pursue the complaint through the County Grievance Procedure. In the event that the employee has previously filed an employment grievance as a result of an incident of sexual harassment, the employee shall not be permitted to pursue a complaint regarding the same incident under this procedure.
4. Step 1:
 - a. It is recommended that the employee alleging sexual harassment (the complainant) report the incident to his/her immediate supervisor (if the immediate supervisor is not the accused). If the complainant is not comfortable, for whatever reason, reporting the incident to his/her immediate supervisor, the complainant may report the incident to any of the following individuals:
 - Department Head/Constitutional Officer
 - Human Resources Director
 - County Administrator.
 - b. For the purpose of this policy, the County Administrator shall be designated as the Equal Opportunity Counselor for the County, and the Board of Supervisors shall be designated as the Equal Opportunity Review Board.
 - c. The person informed of the alleged harassment shall be required to inform the Human Resources Director immediately of the complaint, unless the complainant alleges sexual harassment by the Human Resources Director. Within ten (10) work days, the complainant shall be interviewed by the Human Resources Director to discuss the nature of the allegations, and shall be asked to complete documentation specifically outlining the nature of the complaint.
 - d. The County Administrator and Human Resources Director shall review the complaint, and may obtain such further information concerning the complaint as may be necessary to determine

whether an investigation is warranted. If an investigation is not warranted, the County Administrator shall notify the complainant in writing, within ten (10) work days, that no further investigation shall be undertaken.

- e. In the event that the employee alleges sexual harassment by the Human Resources Director, the County Administrator shall be notified and shall thereafter conduct the interview of the complainant and any further investigation in accordance with this policy without the assistance of the Human Resources Director. Charges of sexual harassment against the County Administrator shall be referred directly by the Human Resources Director to the Board of Supervisors, as the Equal Opportunity Review Board.

5. Step 2:

- a. If an investigation is warranted, the County Administrator, with the assistance of the Human Resources Director, shall notify the accused within three (3) working days. An investigation shall be conducted, as is deemed appropriate, including interviews with the complainant, the victim (if not the complainant), the accused, witnesses named by the victim and others who may have relevant information. The alleged harasser shall be informed of the allegations and provided an opportunity to respond in the interview process. In the event that a complaint of harassment is made against the County Administrator, the Human Resources Director shall request the Board of Supervisors, in its capacity as Equal Opportunity Review Board, to designate a disinterested person as Equal Opportunity Counselor to conduct the investigation of the charge.
- b. The Human Resources Director shall review the personnel files of the complainant and the accused for information related to the complaint.
- c. In the event that a third party such as a contractor, citizen or vendor is responsible for sexual harassment, the County Administrator shall consult with the Human Resources Director, and the Department Head/Constitutional Officer who employs the complainant, to determine the appropriate action to be taken.

6. Step 3:

- a. After completion of the investigation, the County Administrator or

other appointed Equal Opportunity Counselor, shall, within ten (10) calendar days, render a decision regarding the complaint, apprising the complainant of:

the findings regarding the validity of the complaint;

appropriate disciplinary action taken or other relief granted;

notification to the Department Head/Constitutional Officer, that the matter has been addressed and appropriate action taken;

notification to the complainant and the accused of the action taken.

- b. The complainant shall sign the County Administrator's/other appointed Equal Opportunity Counselor's report and indicate agreement or disagreement with the decision within ten (10) calendar days. Failure to sign the report shall be deemed to be an acceptance of the findings and action taken or proposed.
- c. If it is determined that there is no foundation for the allegation, the complaint shall not be made a part of the personnel record of the accused. False accusations may result in severe disciplinary action, including termination.
- d. If there is a foundation for the allegations, the determination of the action to be taken, up to and including termination, shall be based on the facts on a case-by-case basis.
- e. Any complainant or alleged harasser aggrieved by the decision of the Equal Opportunity Counselor may request a review of the action of the Equal Opportunity Counselor by the Board of Supervisors. The decision of the Board, upon review of the proceedings carried out in accordance with the procedures established in this section, shall be final.

D. Reprisals

- 1. No employee shall take reprisal, retaliate or encourage others to engage in retaliation or reprisal against any person acting in good faith who:
 - a. opposes any conduct prohibited by this policy;
 - b. complies or encourages others to comply with this policy;

- c. files a complaint concerning any violation of this policy;
 - d. testifies, assists or participates in any investigation or hearing resulting from a complaint under this policy;
 - e. exercises or attempts to exercise any right conferred under this policy.
- 2. Employees who take reprisal, or encourage others to do so, shall be in violation of this policy and shall receive appropriate disciplinary action.

E. Other Reporting Mechanisms

Employees seeking to redress sexual harassment claims may also file a complaint with the United States Equal Employment Opportunity Commission.

F. Training

The Human Resources Department and individual Department Heads/Constitutional Officers shall make affirmative efforts to educate and sensitize employees regarding conduct that constitutes sexual harassment, and to inform employees that it is prohibited.